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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.	
10/634,166	08/05/2003	Julian Crawford	035470.00001 6335		
7590 05/10/2006			EXAMINER		
Henry S. Jaudon			BRUENJES, CHRISTOPHER P		
McNair Law Firm, P.A. P.O. Box 10827			ART UNIT	PAPER NUMBER	
Greenville, SC 29601			1772		
			DATE MAILED: 05/10/2006		

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief

Application No.	Applicant(s)	
10/634,166	CRAWFORD, JULIAN	
Examiner	Art Unit	
Christopher P. Bruenjes	1772	

	Christopher P. Bruenjes	1//2					
The MAILING DATE of this communication appear	ars on the cover sheet with the c	orrespondence add	ress				
THE REPLY FILED <u>27 April 2006</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.							
1. The reply was filed after a final rejection, but prior to or on this application, applicant must timely file one of the follow places the application in condition for allowance; (2) a Not a Request for Continued Examination (RCE) in compliance time periods:	ring replies: (1) an amendment, aff tice of Appeal (with appeal fee) in c	idavit, or other evider compliance with 37 C	nce, which FR 41.31; or (3)				
 a) The period for reply expiresmonths from the mailing b) The period for reply expires on: (1) the mailing date of this A no event, however, will the statutory period for reply expire la 	dvisory Action, or (2) the date set forth	in the final rejection, wh	ichever is later. In on.				
Examiner Note: If box 1 is checked, check either box (a) or (TWO MONTHS OF THE FINAL REJECTION. See MPEP 70	b). ONLY CHECK BOX (b) WHEN THE 06.07(f).	FIRST REPLY WAS F	ILED WITHIN				
Extensions of time may be obtained under 37 CFR 1.136(a). The date have been filed is the date for purposes of determining the period of ext under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the s set forth in (b) above, if checked. Any reply received by the Office later may reduce any earned patent term adjustment. See 37 CFR 1.704(b). NOTICE OF APPEAL	ension and the corresponding amount hortened statutory period for reply origi than three months after the mailing da	of the fee. The approprinally set in the final Offi	iate extension fee ce action; or (2) as				
2. The Notice of Appeal was filed on A brief in comp filing the Notice of Appeal (37 CFR 41.37(a)), or any exter a Notice of Appeal has been filed, any reply must be filed AMENDMENTS	nsion thereof (37 CFR 41.37(e)), to	avoid dismissal of th					
3. The proposed amendment(s) filed after a final rejection, I	out prior to the date of filing a brief	will not be entered b	ecanse				
(a) They raise new issues that would require further con			ccause				
(b) They raise the issue of new matter (see NOTE below		50.0.17,					
(c) They are not deemed to place the application in bet appeal; and/or		ducing or simplifying	the issues for				
(d) ☐ They present additional claims without canceling a d	corresponding number of finally rej	ected claims.					
NOTE: (See 37 CFR 1.116 and 41.33(a)).							
4. The amendments are not in compliance with 37 CFR 1.12	21. See attached Notice of Non-Co	mpliant Amendment	(PTOL-324).				
5. Applicant's reply has overcome the following rejection(s):	:						
6. Newly proposed or amended claim(s) would be all non-allowable claim(s).	·	•	_				
7. For purposes of appeal, the proposed amendment(s): a) how the new or amended claims would be rejected is provided that the status of the claim(s) is (or will be) as follows: Claim(s) allowed: <u>none</u> .		ll be entered and an e	explanation of				
Claim(s) objected to: <u>none</u> . Claim(s) rejected: <u>8-15</u> . Claim(s) withdrawn from consideration: <u>none</u> .							
AFFIDAVIT OR OTHER EVIDENCE		•					
8. The affidavit or other evidence filed after a final action, bu because applicant failed to provide a showing of good and was not earlier presented. See 37 CFR 1.116(e).							
9. The affidavit or other evidence filed after the date of filing entered because the affidavit or other evidence failed to o showing a good and sufficient reasons why it is necessary	vercome all rejections under appea	al and/or appellant fa	ils to provide a				
10. The affidavit or other evidence is entered. An explanation REQUEST FOR RECONSIDERATION/OTHER	n of the status of the claims after e	ntry is below or attacl	ned.				
11. \(\sum \) The request for reconsideration has been considered bu see continuation sheet.	t does NOT place the application in	n condition for allowa	nce because:				
12. Note the attached Information Disclosure Statement(s). (13. Other:	(PTO/SB/08 or PTO-1449) Paper N	lo(s)					
							
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ADVISORY ACTION

Acknowledgement of Applicant's Amendments

Applicant's amendments will be entered for purposes of appeal since the limitations added in the proposed amendment were presented and discussed earlier and as such present no new issues but serve to make the claim definite.

WITHDRAWN REJECTIONS

The 35 U.S.C. 112 rejections of claims 8-15 of record in the office Action mailed April 6, 2006, Pages 2-3 Paragraph 3, would be withdrawn when this amendment is entered for purposes of appeal.

REPEATED REJECTIONS

The 35 U.S.C. 102 rejections of claims 8-12 and 14 as anticipated by O'Neil are repeated for the reasons set forth in the previous Office Action mailed December 28, 2005, Pages 3-6 Paragraph 7.

The 35 U.S.C. 103 rejections of claims 13 and 15 over
O'Neil are repeated for the reasons set forth in the previous
Office Action mailed December 28, 2005, Pages 7-8 Paragraph 10.

ANSWERS TO APPLICANT'S ARGUMENTS

Applicant's arguments regarding the 35 U.S.C. 112 rejections of claims 8-15 of record have been considered but they are most since the rejections are withdrawn in light of the proposed amendment.

Applicant's arguments regarding the 35 U.S.C. 102 and 103 rejections of claims 8-15 over O'Neil have been fully considered but they are not persuasive.

In response to Applicant's argument that the thermoplastic twine of O'Neil is not a tubular fabric, as stated in the previous Office Actions the twine of O'Neil as shown in the drawings has longitudinal filaments that are aligned in a circular pattern around the circumference of the twine and further longitudinal filaments aligned within the filaments on the outer surface of the twine. A hollow cylindrical body or tubular article is still tubular regardless of whether something is filling the hollow space, in the same manner that a pipe or container is still considered a pipe or container when it is filled with particular filler. Therefore, in the same manner, the twine of O'Neil as described anticipates a hollow

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cylindrical body containing longitudinal filaments within the hollow portion of the cylindrical body.

In response to Applicant's argument that the specification defines heat set as yarns drawn and heated to fix desired elongation characteristics, the specification does not provide a specific definition for the term heat set only describing that the yarns are provided with a heat set to have first elongation capabilities. The yarns or filaments of O'Neil are heat set to provide a particular twist and in so doing are heat set when that term is given its broadest reasonable interpretation. Furthermore, the heat setting of the filament to provide a particular twist would inherently provide the filament with a first elongation capability since all filaments have an elongation capability and the claims do not limit the filament to in particular elongation.

In response to Applicant's argument that O'Neil fails to teach that the elongation characteristics of the second filaments are greater than the first, O'Neil specifically teaches that the longitudinal filaments are thermoplastic and the elastic filaments are formed of rubber. Thermoplastics are known in the art to have limited elongation compared to rubber, which is known to be fully elastic. Therefore, regardless of whether or not the longitudinal filaments were heat set

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according to a specific process, the inherent characteristics of thermoplastics and rubber would teach one of ordinary skill in the art that the rubber elastic filaments would have greater elongation capabilities than the thermoplastic longitudinal filaments.

In response to Applicant's argument that the strands of O'Neil along the perimeter of the twine cannot be considered a hollow cylindrical body since they cannot be positioned without the inner strands first being in position. The outer strands of O'Neil are bonded to the elastic filaments surrounding the outer strands so that they would be positioned with regard to those filaments. Furthermore, just because the hollow cylindrical body is flexible to the point of collapsing when a material is not placed within its walls does not mean that he hollow cylindrical body is no longer tubular. Many fabrics wrapped and bonded at their ends to form a circular shape would not have the stiffness to remain open, but would still be considered tubular because the fabric could be opened and elongated objects be placed within them so that the fabric forms a sleeve around the object. A knitted cozy for placing around a cup or beverage container is an example of a tubular fabric that collapses.

In response to Applicant's argument that the Examiner's position is based on hindsight, hindsight is not germane to the

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issue of an anticipatory reference. When a reference contains all of the structural limitations claimed it anticipates the claim. No hindsight is required because the limitations are all taught within the reference. Hindsight is only a consideration with regard to an obviousness rejection in which hindsight is used as the basis for an obviousness statement with in the rejection.

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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher P. Bruenjes whose telephone number is 571-272-1489. The examiner can normally be reached on Monday thru Friday from 8:00am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Christopher P Bruenjes Examiner

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May 8, 2006

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